

110TH CONGRESS
2D SESSION

S. 3705

To amend the Small Business Act and the Small Business Investment Act of 1958 to stop the small business credit crunch, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 19, 2008

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Small Business Act and the Small Business Investment Act of 1958 to stop the small business credit crunch, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; DEFINITIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the “10
5 Steps for a Main Street Economic Recovery Act of 2008”.

6 (b) DEFINITIONS.—In this Act—

7 (1) the term “Administration” means the Small
8 Business Administration;

1 (2) the term “Administrator” means the Ad-
 2 ministrator of the Small Business Administration;
 3 and

4 (3) the term “small business concern” has the
 5 same meaning as in section 3 of the Small Business
 6 Act (15 U.S.C. 632).

7 **SEC. 2. 7(a) LOANS.**

8 (a) MAXIMUM LOAN AMOUNT.—Section 7(a)(3)(A)
 9 of the Small Business Act (15 U.S.C. 636(a)(3)(A)) is
 10 amended by striking “\$1,500,000 (or if the gross loan
 11 amount would exceed \$2,000,000” and inserting
 12 “\$2,500,000 (or if the gross loan amount would exceed
 13 \$3,000,000”.

14 (b) REFINANCING EXISTING LOANS.—

15 (1) IN GENERAL.—Section 7(a) of the Small
 16 Business Act (15 U.S.C. 636) is amended by adding
 17 at the end the following:

18 “(34) REFINANCING EXISTING LOANS.—A bor-
 19 rower that has received a loan under this subsection
 20 may refinance the balance of the loan by applying
 21 for a loan from the lender that made the original
 22 loan or with another lender.”.

23 (2) TECHNICAL AMENDMENT.—Section 7(a) of
 24 the Small Business Act (15 U.S.C. 636(a)) is

1 amended by striking “(32) INCREASED” and insert-
 2 ing “(33) INCREASED”.

3 (c) ALTERNATIVE SIZE STANDARD.—Section 3(a) of
 4 the Small Business Act (15 U.S.C. 632(a)) is amended
 5 by adding at the end the following:

6 “(5) OPTIONAL SIZE STANDARD.—

7 “(A) IN GENERAL.—The Administrator
 8 shall establish an optional size standard for
 9 business loan applicants under section 7(a) and
 10 development company loan applicants under
 11 title V of the Small Business Investment Act of
 12 1958 (15 U.S.C. 695 et seq.) that uses max-
 13 imum tangible net worth and average net in-
 14 come as an alternative to the industry size
 15 standard.

16 “(B) INTERIM RULE.—Until the date on
 17 which the optional size standards established
 18 under subparagraph (A) are in effect, the alter-
 19 native size standard in section 121.301(b) of
 20 title 13, Code of Federal Regulations, or any
 21 successor thereto, may be used by business loan
 22 applicants under section 7(a).”.

23 (d) FLEXIBILITY FOR POOLING OF LARGE LOANS.—
 24 Section 5(g)(1) of the Small Business Act (15 U.S.C.
 25 634(g)(1)) is amended by—

1 (1) inserting “(A)” after “(1)”;

2 (2) striking the colon and inserting a period;

3 (3) striking “*Provided*” and all that follows
4 through “certificates” and inserting the following:

5 “(B) A trust certificate issued under this paragraph”;

6 and

7 (4) adding at the end the following:

8 “(C) For a loan of more than \$500,000 that has been
9 guaranteed by the Administrator under this Act, the Ad-
10 ministrator shall, on the request of a loan pool assembler,
11 divide the amount of such loan into individual guarantees,
12 no 1 of which may exceed \$500,000. Not more than 1
13 portion of a loan that has been divided under this subpara-
14 graph shall be included in the same pool. Portions of more
15 than 1 loan divided under this subparagraph may be in-
16 cluded in the same pool.

17 “(D) A lender that makes or services a loan guaran-
18 teed under section 7(a) may purchase or hold all or any
19 part of a loan pool that includes a loan made or serviced
20 by the lender.

21 “(E) A purchase or holding by a lender described in
22 subparagraph (D) shall not affect the guarantee under
23 section 7(a) of a loan in a pool.”.

1 **SEC. 3. COMMUNITY EXPRESS AND RURAL LENDING.**

2 (a) COMMUNITY EXPRESS PROGRAM ESTAB-
3 LISHED.—Section 7(a) of the Small Business Act (15
4 U.S.C. 636(a)), as amended by this Act, is amended by
5 adding at the end the following:

6 “(35) COMMUNITY EXPRESS PROGRAM.—

7 “(A) DEFINITIONS.—In this paragraph—

8 “(i) the term ‘community express pro-
9 gram’ means the loan program under this
10 paragraph;

11 “(ii) the term ‘eligible small business
12 concern’ means—

13 “(I) a small business concern
14 owned and controlled by women, as
15 defined in section 29(a)(3);

16 “(II) a small business concern
17 owned by a qualified Indian tribe;

18 “(III) a small business concern
19 owned and controlled by a socially or
20 economically disadvantaged individual,
21 as determined by the Administrator;

22 “(IV) a small business concern
23 owned and controlled by veterans;

24 “(V) a small business concern
25 owned and controlled by a member of
26 a reserve component of the Armed

1 Forces, as defined in section 101 of
 2 title 10, United States Code;

3 “(VI) a small business concern
 4 located in an area that the Adminis-
 5 trator determines to be a low-income
 6 or moderate-income area;

7 “(VII) a HUBZone small busi-
 8 ness concern; and

9 “(VIII) a small business concern
 10 located in a special market initiative;

11 “(iii) the term ‘qualified private lend-
 12 er’ means a private lender that meets such
 13 requirements as the Administrator shall es-
 14 tablish; and

15 “(iv) the term ‘special market initia-
 16 tive’ means a community, market, or in-
 17 dustry designated by the Director of a dis-
 18 trict office of the Administration for eco-
 19 nomic development purposes.

20 “(B) LOANS OF \$150,000 OR LESS.—

21 “(i) AUTHORIZATION.—The Adminis-
 22 trator may guarantee timely payment of
 23 principal and interest, as scheduled, on a
 24 loan of not more than \$150,000 issued by

1 a qualified private lender to a small busi-
 2 ness concern.

3 “(ii) GUARANTEE PERCENTAGE.—The
 4 Administrator may guarantee not more
 5 than 85 percent of the amount of a loan
 6 under this subparagraph.

7 “(C) LOANS OF MORE THAN \$150,000.—

8 “(i) AUTHORIZATION.—The Adminis-
 9 trator may guarantee timely payment of
 10 principal and interest, as scheduled, on a
 11 loan of more than \$150,000 and not more
 12 than \$300,000 issued by a qualified pri-
 13 vate lender to an eligible small business
 14 concern under this subparagraph.

15 “(ii) GUARANTEE PERCENTAGE.—The
 16 Administrator may guarantee not more
 17 than 75 percent of a loan the amount of
 18 a loan under this subparagraph.

19 “(D) QUALIFIED PRIVATE LENDER RE-
 20 QUIREMENTS.—

21 “(i) TECHNICAL ASSISTANCE.—A
 22 qualified private lender shall—

23 “(I) ensure that appropriate
 24 technical assistance is provided to
 25 each borrower that receives a loan

1 under the community express program
2 from the qualified private lender;

3 “(II) encourage a borrower that
4 receives a loan under the community
5 express program from the qualified
6 private lender to use the business de-
7 velopment programs of the Adminis-
8 tration for technical assistance; and

9 “(III) to the extent practicable,
10 use the loan process to work with a
11 borrower that receives a loan under
12 the community express program from
13 the qualified private lender, in order
14 to—

15 “(aa) develop a business
16 plan, if appropriate;

17 “(bb) assess the strengths
18 and weaknesses of the borrower
19 in management and other rel-
20 evant areas; and

21 “(cc) provide technical as-
22 sistance to address any assessed
23 weaknesses of the borrower.

24 “(ii) COLLATERAL POLICY.—

1 “(I) IN GENERAL.—The Admin-
2 istrator shall establish a policy relat-
3 ing to collateral for loans under the
4 community express program, which
5 shall permit a qualified private lender
6 to make a loan of not more than
7 \$15,000 without collateral.

8 “(II) LIMITATION.—The policy
9 established by the Administrator may
10 not limit the ability of a qualified pri-
11 vate lender to follow any internal pro-
12 cedure of the lender related to collat-
13 eral.

14 “(iii) EQUITY OF BORROWERS.—Each
15 qualified private lender shall verify that a
16 borrower receiving a loan under the com-
17 munity express program has an equity
18 stake of at least 10 percent in the business
19 concern.

20 “(iv) FINANCIAL STATEMENTS.—Each
21 qualified private lender shall obtain a fi-
22 nancial statement from a borrower before
23 making a loan under the community ex-
24 press program.

1 “(v) SALE OF LOANS.—A qualified
 2 private lender may not sell more than 80
 3 percent of the total dollar value of the
 4 loans made by the qualified private lender
 5 under the community express program to
 6 another person or entity.

7 “(E) SIMPLIFICATION OF RULES.—The
 8 Administrator shall review the regulations and
 9 procedures relating to the community express
 10 program to ensure that such regulations and
 11 procedures are simple and clear and do not cre-
 12 ate barriers to participation in the program.

13 “(F) NOTICE AND COMMENT.—The Ad-
 14 ministrator shall establish policies relating to
 15 the community express program—

16 “(i) after notice and the opportunity
 17 for comment; and

18 “(ii) not later than 1 year after the
 19 date of enactment of this paragraph.”.

20 (b) RURAL LENDER AND NEW LENDER OUTREACH
 21 PROGRAM.—Section 7(a) of the Small Business Act (15
 22 U.S.C. 636(a)), as amended by this Act, is amended by
 23 adding at the end the following:

24 “(36) RURAL LENDER AND NEW LENDER OUT-
 25 REACH PROGRAM.—

1 “(A) DEFINITIONS.—In this paragraph—

2 “(i) the term ‘new lender’ means a
3 lender that has not made more than 20
4 loans guaranteed by the Administrator
5 during the 3-year period ending on the
6 date on which the applicable loan is sub-
7 mitted (including a lender that has not
8 made a loan guaranteed by the Adminis-
9 tration);

10 “(ii) the term ‘rural area’ has the
11 meaning given that term in subsection (m);
12 and

13 “(iii) the term ‘rural lender’ means a
14 lender that—

15 “(I) is located in a rural area;
16 and

17 “(II) made not more than 20
18 loans guaranteed by the Administra-
19 tion during the 3-year period ending
20 on the date on which the applicable
21 loan application is submitted (includ-
22 ing a lender that has not made a loan
23 guaranteed by the Administration).

24 “(B) PROGRAM.—The Administrator shall
25 carry out a rural lender and new lender out-

1 reach program, under which the Administrator
2 may guarantee timely payment of principal and
3 interest, as scheduled, on a loan to a small
4 business concern of not more than \$500,000
5 made by a rural lender or a new lender.

6 “(C) LOAN PROCESSING.—

7 “(i) IN GENERAL.—The Administrator
8 shall establish, for loans guaranteed under
9 this paragraph—

10 “(I) streamlined application and
11 documentation requirements; and

12 “(II) minimum credit standards
13 necessary to provide for a reasonable
14 assurance of repayment, in accordance
15 with paragraph (6).

16 “(ii) NEW LENDER TRAINING AND
17 CERTIFICATION.—The Administrator may
18 guarantee a loan made by a new lender
19 under this paragraph if the Adminis-
20 trator—

21 “(I) provides the new lender with
22 training described in subparagraph
23 (D); and

24 “(II) determines that the new
25 lender meets minimum standards for

1 program knowledge, borrower eligi-
2 bility, and underwriting standards.

3 “(iii) APPROVAL OR DISAPPROVAL.—

4 For a loan guaranteed under this para-
5 graph, the Administrator shall approve or
6 disapprove the loan in as expedited manner
7 as practicable.

8 “(D) TRAINING.—At regularly scheduled
9 intervals and upon request by a new lender or
10 rural lender the Administrator shall provide
11 training for new lenders and rural lenders on
12 the loan guarantee program under this sub-
13 section.”.

14 (c) ELECTRONIC ONLINE LOAN UNDERWRITING
15 PROGRAM GUIDE.—

16 (1) PURPOSE.—The purpose of this subsection
17 is to assist rural lenders and new lenders in making
18 more loans of good underwriting quality to small
19 business concerns.

20 (2) ONLINE UNDERWRITING GUIDE.—The Ad-
21 ministrator shall establish an online underwriting
22 program guide (in this subsection referred to as the
23 “guide”) to develop the lending capacity of rural
24 lenders and new lenders (as such terms are defined

1 in paragraph (36) of section 7(a) of the Small Busi-
2 ness Act (15 U.S.C. 636(a)), as added by this Act).

3 (3) REQUIREMENTS.—The guide—

4 (A) is not intended to replace the internal
5 credit scoring and loan approval process of a
6 lender;

7 (B) shall demonstrate the steps the Ad-
8 ministrator expects a lender to take in making
9 a loan under a program of the Administration;

10 (C) shall assist a lender in using the inter-
11 nal credit evaluation processes of the lender to
12 make a loan under a program of the Adminis-
13 tration and build the capacity and ability of the
14 lender to make such loans;

15 (D) shall provide simple steps to assist a
16 lender that has not made a loan guaranteed by
17 the Administration through the loan application
18 process for a loan under section 7(a) of the
19 Small Business Act (15 U.S.C. 636(a));

20 (E) shall include information, guidance,
21 sample documentation, questions and answers,
22 and any other information necessary to guide a
23 lender through the process of making a loan
24 guaranteed by the Administration in a system-
25 atic and simple fashion; and

- 1 (F) shall include information relating to—
- 2 (i) loan application and preapproval;
- 3 (ii) loan underwriting;
- 4 (iii) requirements after loan approval;
- 5 (iv) preparation for loan closing;
- 6 (v) closing the loan; and
- 7 (vi) servicing the loan.

8 (4) ELECTRONICALLY SUBMITTED LOANS.—

9 The Administrator shall use the guide as a means

10 to increase the number of applications for loan guar-

11 antees submitted electronically for approval from

12 rural lenders and new lenders.

13 **SEC. 4. 504 LOANS.**

14 (a) MAXIMUM LOAN AMOUNTS UNDER 504 PRO-

15 GRAM.—Section 502(2)(A) of the Small Business Invest-

16 ment Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

17 (1) in clause (i), by striking “\$1,500,000” and

18 inserting “\$2,250,000”;

19 (2) in clause (ii), by striking “\$2,000,000” and

20 inserting “\$3,000,000”; and

21 (3) in clause (iii), by striking “\$4,000,000” and

22 inserting “\$5,500,000”.

23 (b) BUSINESSES IN LOW-INCOME COMMUNITIES.—

24 (1) GOALS.—Section 501(d)(3)(A) of the Small

25 Business Investment Act of 1958 (15 U.S.C.

1 695(d)(3)(A)) is amended by inserting after “busi-
 2 ness district revitalization,” the following: “or ex-
 3 pansion of businesses in a low-income community, as
 4 defined in section 45D(e) of the Internal Revenue
 5 Code of 1986 and implementing regulations,”.

6 (2) ADDITIONAL INCENTIVES.—Section 502 of
 7 the Small Business Investment Act of 1958 (15
 8 U.S.C. 696) is amended by adding at the end the
 9 following:

10 “(7) LOW-INCOME COMMUNITIES.—

11 “(A) LOAN AMOUNT.—Notwithstanding
 12 paragraph (2)(A)(ii), a loan under this section
 13 for use in a low-income community described in
 14 section 501(d)(3)(A) may not exceed
 15 \$5,500,000.

16 “(B) SIZE STANDARDS.—For purposes of
 17 determining eligibility for a loan under this sec-
 18 tion for use in a low-income community de-
 19 scribed in section 501(d)(3)(A), the size stand-
 20 ards established by the Administrator under
 21 section 3 of the Small Business Act (15 U.S.C.
 22 632) shall be increased by 25 percent.

23 “(C) PERSONAL LIQUIDITY.—

24 “(i) IN GENERAL.—For any loan
 25 under this section for use in a low-income

community described in section 501(d)(3)(A), the amount of personal resources of an owner that are excluded from the amount required to be provided to reduce the portion of the project funded by the Administration shall be not less than 25 percent more than that required for other loans under this section.

“(ii) DEFINITION.—In this subparagraph, the term ‘owner’ means any person that owns not less than 20 percent of the equity of the small business concern applying for the applicable loan.”.

(c) ADDITIONAL EQUITY INJECTIONS.—Section 502(3)(B)(ii) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(B)(ii)) is amended to read as follows:

“(ii) FUNDING FROM INSTITUTIONS.—If a small business concern—

“(I) provides the minimum contribution required under subparagraph (C), not less than 50 percent of the total cost of any project financed under clause (i), (ii), or (iii) of subparagraph (C) shall come from the in-

1 stitutions described in subclauses (I),
 2 (II), and (III) of clause (i) of this
 3 subparagraph; and

4 “(II) provides more than the
 5 minimum contribution required under
 6 subparagraph (C), any excess con-
 7 tribution may be used to reduce the
 8 amount required from the institutions
 9 described in subclauses (I), (II), and
 10 (III) of clause (i) of this subpara-
 11 graph, except that the amount from
 12 such institutions may not be reduced
 13 to an amount that is less than the
 14 amount of the loan made by the Ad-
 15 ministrator.”.

16 (d) REFINANCING UNDER THE LOCAL DEVELOP-
 17 MENT BUSINESS LOAN PROGRAM.—Section 502 of the
 18 Small Business Investment Act of 1958 (15 U.S.C. 696),
 19 as amended by this Act, is amended by adding at the end
 20 the following:

21 “(8) PERMISSIBLE DEBT REFINANCING.—

22 “(A) IN GENERAL.—Any financing ap-
 23 proved under this title may include a limited
 24 amount of debt refinancing.

“(B) EXPANSIONS.—If the project involves expansion of a small business concern which has existing indebtedness collateralized by fixed assets, any amount of existing indebtedness that does not exceed $\frac{1}{2}$ of the project cost of the expansion may be refinanced and added to the expansion cost, if—

“(i) the proceeds of the indebtedness were used to acquire land, including a building situated thereon, to construct a building thereon, or to purchase equipment;

“(ii) the borrower has been current on all payments due on the existing debt for not less than 1 year preceding the date of refinancing; and

“(iii) the financing under section 504 will provide better terms or rate of interest than exists on the debt at the time of refinancing.”.

(e) JOB CREATION REQUIREMENTS.—Section 501(e) of the Small Business Investment Act of 1958 (15 U.S.C. 695(e)) is amended—

(1) in paragraph (1), by striking “\$50,000” and inserting “\$65,000”; and

1 (2) in paragraph (2), by striking “\$50,000”
 2 and inserting “\$65,000”.

3 **SEC. 5. GUARANTEE AND SALE OF BANK FINANCINGS WITH**
 4 **504 LOAN PROGRAM.**

5 (a) DEFINITIONS.—In this section—

6 (1) the term “pool assembler” means a finan-
 7 cial institution that—

8 (A) organizes and packages a loan pool by
 9 acquiring the guaranteed portion of third party
 10 financings guaranteed by the Administrator
 11 under subsection (b);

12 (B) resells fractional interests in the loan
 13 pool to registered holders; and

14 (C) directs that the fiscal and transfer
 15 agent of the Administrator to issue trust certifi-
 16 cates; and

17 (2) the term “third party financing” means a
 18 financing described in section 502(3)(B)(ii) of the
 19 Small Business Investment Act of 1958 (15 U.S.C.
 20 696(3)(B)(ii))—

21 (A) made on or before the date of enact-
 22 ment of this Act;

23 (B) that provides for the payment of inter-
 24 est at a fixed rate or under a variable rate
 25 index (plus a spread) based upon Prime rate, a

1 London Interbank Offered Rate (or LIBOR), a
2 Federal Home Loan Bank rate, a United States
3 Treasury rate, or a generally accepted market
4 index rate approved by the Administrator;

5 (C) that provides amortized payments with
6 a maturity of not more than 25 years; and

7 (D) for which the borrower—

8 (i) is current on all payments due on
9 the loan on the date on which the loan is
10 guaranteed under subsection (b); and

11 (ii) has not been more than 29 days
12 past due on a payment during the 12-
13 month period ending on the date on which
14 the loan is guaranteed under subsection
15 (b).

16 (b) LOAN GUARANTEE.—

17 (1) IN GENERAL.—To the extent amounts are
18 provided in advance in appropriations Acts, and in
19 accordance with this subsection, upon application of
20 a pool assembler who has acquired a third party fi-
21 nancing, the Administrator shall guarantee the time-
22 ly repayment of principal and interest on 80 percent
23 of the balance of the third party financing out-
24 standing on the date of the guarantee.

1 (2) LENDERS.—A lender that made a third
2 party financing guaranteed under paragraph (1)—

3 (A) shall—

4 (i) agree to hold and service the note
5 issued as part of the third party financing;

6 (ii) comply with the reporting and
7 payment remittance requirements of the
8 Administrator; and

9 (iii) enter a secondary participation
10 guaranty agreement with the Adminis-
11 trator and the fiscal and transfer agent of
12 the Administrator; and

13 (B) may collect and retain all of any appli-
14 cable prepayment penalties otherwise provided
15 in the event the third party financing is pre-
16 paid.

17 (3) GUARANTEE FEE.—To cover the costs of
18 guarantees under this subsection and the cost of
19 issuing trust certificates under subsection (c), a
20 lender that made a third party financing guaranteed
21 under paragraph (1) shall pay to the Adminis-
22 trator—

23 (A) a one-time fee equal to 1 percent of
24 the net amount of the third party financing
25 guaranteed by the Administration, payable on

1 the date on which the third party financing is
2 guaranteed; and

3 (B) a monthly fee on the unpaid balance of
4 the net amount of the third party financing
5 guarantee at the rate of 25 basis points per
6 year.

7 (4) MAXIMUM AMOUNT.—The Administrator
8 may guarantee a total amount of not more than
9 \$6,000,000,000 in third party financings under this
10 subsection.

11 (5) TERMINATION OF AUTHORITY.—The au-
12 thority of the Administrator to guarantee a third
13 party financing under this subsection shall terminate
14 on September 30, 2010.

15 (6) APPROPRIATION.—In addition to any other
16 amounts appropriated, there are appropriated for
17 the fiscal year ending September 30, 2009, for the
18 “Business Loans Program Account” of the Adminis-
19 tration, out of any money in the Treasury not other-
20 wise appropriated, \$1 for loan subsidies and for loan
21 modifications for guarantees authorized under this
22 subsection, to remain available until expended.

23 (c) TRUST CERTIFICATES.—

24 (1) ISSUANCE.—The Administrator may issue a
25 trust certificate representing ownership of all or a

1 fractional part of the guaranteed portion of 1 or
2 more third party financings that have been guaran-
3 teed by the Administrator under subsection (b). A
4 trust certificate issued under this subsection shall be
5 based on and backed by a trust or pool approved by
6 the Administrator and composed solely of the entire
7 guaranteed portion of third party financings guaran-
8 teed by the Administrator under subsection (b).

9 (2) POOLING REQUIREMENTS.—

10 (A) INTEREST RATE.—The interest rate on
11 a trust certificate issued under this subsection
12 shall be the weighted average interest rate of all
13 third party financings in the pool. There shall
14 be no limit on the difference between the high-
15 est and lowest note interest rates on third party
16 financings forming the pool.

17 (B) MATURITY.—

18 (i) IN GENERAL.—Each pool may in-
19 clude either—

20 (I) third party financings with
21 remaining terms to maturity of 15
22 years or less; or

23 (II) third party financings with
24 remaining terms to maturity of more
25 than 15 years.

1 (ii) NO OTHER LIMITATIONS.—Except
2 as provided in clause (i), the Administrator
3 may not limit the difference between the
4 remaining terms to maturity of the third
5 party financings forming a pool.

6 (C) SIZE.—

7 (i) IN GENERAL.—If the amount of
8 the guaranteed portion of any third party
9 financing exceeds \$500,000, the Adminis-
10 trator shall, upon request of the pool as-
11 sembler, divide the amount of the third
12 party financing into individual guarantees
13 no 1 of which exceeds \$500,000.

14 (ii) DIVIDED FINANCINGS.—Not more
15 than 1 portion of a third party financing
16 that has been divided under this subpara-
17 graph shall be included in the same pool.
18 Portions of more than 1 third party fi-
19 nancing divided under this subparagraph
20 may be included in the same pool.

21 (3) TIMELY PAYMENT.—

22 (A) IN GENERAL.—The Administrator
23 may, upon such terms and conditions as the
24 Administrator determines appropriate, guar-
25 antee the timely payment of principal and inter-

1 est on a trust certificate issued by the Adminis-
2 trator or an agent of the Administrator under
3 this subsection. A guarantee under this para-
4 graph shall be limited to the principal and in-
5 terest on the guaranteed portions of the third
6 party financings that comprise the trust or
7 pool.

8 (B) PREPAYMENT.—If a third party fi-
9 nancing in a trust or pool guaranteed under
10 this paragraph is prepaid, either voluntarily or
11 in the event of default, the guarantee of timely
12 payment of principal and interest on the trust
13 certificates shall be reduced in proportion to the
14 amount of principal and interest the prepaid
15 third party financing represents in the trust or
16 pool. Interest on prepaid or defaulted third
17 party financings shall accrue and be guaranteed
18 by the Administrator only through the date of
19 payment on the guarantee. During the term of
20 a trust certificate issued under this subsection,
21 the trust certificate may be called for redemp-
22 tion due to prepayment or default of all third
23 party financings constituting the pool.

24 (4) FULL FAITH AND CREDIT.—The full faith
25 and credit of the United States is pledged to the

1 payment of all amounts that may be required to be
2 paid under any guarantee of a trust certificate
3 issued by the Administrator or an agent of the Ad-
4 ministrator under this subsection.

5 (5) USE OF AGENT.—The Administrator shall
6 negotiate an amendment to the contract in effect on
7 the date of enactment of this Act with the agent for
8 fee collection for trust certificates issued under sec-
9 tion 5(g) of the Small Business Act (15 U.S.C.
10 634(g)) to collect the monthly fee under subsection
11 (b)(3)(B) of this section. The agent may receive, as
12 compensation for services, any interest earned on a
13 fee collected under this section while in the control
14 of the agent before the time at which the agent is
15 contractually required to remit the fee to the Admin-
16 istrator.

17 (6) CLAIMS.—In the event the Administrator
18 pays a claim under a guarantee issued under this
19 subsection, it shall be subrogated fully to the rights
20 satisfied by such payment.

21 (7) OWNERSHIP RIGHTS.—No State or local
22 law, and no Federal law, shall preclude or limit the
23 exercise by the Administrator of the ownership
24 rights in the portions of third party financings con-

1 stituting the trust or pool against which a trust cer-
2 tificate is issued under this subsection.

3 (8) CENTRAL REGISTRATION.—The Adminis-
4 trator—

5 (A) shall provide for a central registration
6 of all trust certificates issued under this sub-
7 section;

8 (B) shall negotiate an amendment to the
9 contract in effect on the date of enactment of
10 this Act with the agent for central registration
11 of trust certificates issued pursuant to section
12 5(h) of the Small Business Act (15 U.S.C.
13 634(h)) to carry out on behalf of the Adminis-
14 trator the central registration functions under
15 this subsection and the issuance of trust certifi-
16 cates to facilitate pooling, under which—

17 (i) the agent may be compensated
18 through any of the fees collected under this
19 section and any interest earned on any
20 funds collected by the agent while such
21 funds are in the control of the agent and
22 before the time at which the agent is con-
23 tractually required to transfer such funds
24 to the Administrator or to the holders of
25 the trust certificates, as appropriate; and

1 (ii) the agent shall provide a fidelity
 2 bond or insurance in such amounts as the
 3 Administrator determines to be necessary
 4 to fully protect the interest of the Govern-
 5 ment; and
 6 (C) may—

7 (i) use a book-entry or other elec-
 8 tronic form of registration for trust certifi-
 9 cates issued under this subsection; and

10 (ii) with the consent of the Secretary
 11 of the Treasury, use the book-entry system
 12 of the Federal Reserve System.

13 (9) SALE.—The Administrator shall, before any
 14 sale of a trust certificate issued under this sub-
 15 section, require the seller to disclose to the pur-
 16 chaser of the trust certificate information on the
 17 terms, conditions, and yield of such instrument.

18 (10) BROKERS AND DEALERS.—The Adminis-
 19 trator may issue regulations relating to the
 20 brokering of and dealing in trust certificates sold
 21 under this subsection.

22 (11) TERMINATION OF AUTHORITY.—The au-
 23 thority of the Administrator to issue trust certifi-
 24 cates under this subsection shall terminate on Sep-
 25 tember 30, 2010.

1 (d) IMPLEMENTATION.—Not later than 30 days after
 2 the date of enactment of this Act, the Administrator shall
 3 issue interim final regulations to carry out this section.

4 (e) LENDER PURCHASE ELIGIBILITY.—

5 (1) IN GENERAL.—A lender that made or serv-
 6 ices a loan guaranteed under section 7(a) of the
 7 Small Business Act (15 U.S.C. 636(a)) or a third
 8 party financing guaranteed under subsection (b) of
 9 this section may purchase and hold all or any part
 10 of a loan pool which includes a loan or third party
 11 financing made or serviced by the lender.

12 (2) NO EFFECT ON GUARANTEE.—A purchase
 13 described in subparagraph (A) shall not affect the
 14 guarantee of a loan or third party financing in a
 15 pool.

16 **SEC. 6. EMERGENCY SHORT TERM FEE REDUCTIONS.**

17 (a) LENDER OVERSIGHT FEES.—

18 (1) TEMPORARY REDUCTION IN FEES.—

19 (A) IN GENERAL.—To the extent amounts
 20 are provided in advance in appropriations Acts,
 21 the Administrator shall, in lieu of the fee other-
 22 wise applicable under section 5(b)(14) of the
 23 Small Business Act (15 U.S.C. 634(b)(14)),
 24 collect no fee.

1 (B) AUTHORIZATION OF APPROPRIA-
 2 TIONS.—There are authorized to be appro-
 3 priated for salaries and expenses of the Admin-
 4 istration relating to examinations, reviews, and
 5 other lender oversight activities relating to
 6 loans under section 7 of the Small Business Act
 7 (15 U.S.C. 636)—

8 (i) \$10,000,000 for each of fiscal
 9 years 2009 and 2010; and

10 (ii) such sums as may be necessary
 11 for each fiscal year thereafter.

12 (2) REPORT ON MAKING FEES CONTINGENT ON
 13 PERFORMANCE.—Not later than 6 months after the
 14 date of enactment of this Act, the Administrator, in
 15 consultation with lenders that have made loans guar-
 16 anteed under section 7 of the Small Business Act
 17 (15 U.S.C. 636), shall submit to the Committee on
 18 Small Business and Entrepreneurship of the Senate
 19 and the Committee on Small Business of the House
 20 of Representatives a report regarding the feasibility
 21 of assessing annual fees under section 7(a)(23)(A)
 22 of the Small Business Act (15 U.S.C.
 23 636(a)(23)(A)) in an amount that is contingent on
 24 the performance of the lender, including consider-
 25 ation of the meeting the requirement under section

1 7(a)(1) of that Act (15 U.S.C. 636(a)(1)) of pro-
 2 viding credit to applicants than cannot obtain credit
 3 elsewhere. The report under this paragraph may in-
 4 clude proposed legislation.

5 (b) FEE REDUCTIONS.—

6 (1) NEW 7(a) LENDER DEFINED.—In this sub-
 7 section the term “new 7(a) lender” means a lender
 8 that has not made more than 20 loans guaranteed
 9 by the Administrator under section 7(a) of the Small
 10 Business Act (15 U.S.C. 636(a)) during the 3-year
 11 period ending on the date on which the Adminis-
 12 trator determines the fee under section 7(a)(23)(A)
 13 of that Act (15 U.S.C. 636(a)(23)(A)) for the lend-
 14 er.

15 (2) 7(a) LOAN FEE REDUCTIONS.—

16 (A) IN GENERAL.—For fiscal years 2009
 17 and 2010, and to the extent the cost of such re-
 18 duction in fees is offset by appropriations, with
 19 respect to each loan guaranteed under section
 20 7(a) of Small Business Act (15 U.S.C.
 21 636(a))—

22 (i) the Administrator shall, in lieu of
 23 the fee otherwise applicable under section
 24 7(a)(23)(A) of the Small Business Act (15

1 U.S.C. 636(a)(23)(A)), collect an annual
2 fee in an amount equal to—

3 (I) 0.25 percent of the out-
4 standing balance of the deferred par-
5 ticipation share of a loan made under
6 section 7(a) of the Small Business Act
7 (15 U.S.C. 636(a)) to a small busi-
8 ness concern before the date of enact-
9 ment of this Act; and

10 (II) .20 percent of the out-
11 standing balance of the deferred par-
12 ticipation share of a loan made by a
13 new 7(a) lender to a small business
14 concern; and

15 (ii) with respect to each loan guaran-
16 teed under section 7(a) of the Small Busi-
17 ness Act (15 U.S.C. 636(a)), the Adminis-
18 trator shall, in lieu of the fee otherwise ap-
19 plicable under section 7(a)(18)(A) of the
20 Small Business Act (15 U.S.C.
21 636(a)(18)(A)), (including any additional
22 fee under clause (iv) of that section
23 7(a)(18)(A)) collect a guarantee fee in an
24 amount equal to—

1 (I) 0.75 percent of the deferred
2 participation share of a total loan
3 amount that is not more than
4 \$150,000;

5 (II) 2 percent of the deferred
6 participation share of a total loan
7 amount that is more than \$150,000,
8 and not more than \$700,000; and

9 (III) 2.5 percent of the deferred
10 participation share of a total loan
11 amount that is more than \$700,000.

12 (B) IMPLEMENTATION.—In carrying out
13 this paragraph, the Administrator shall reduce
14 the fees for a loan guaranteed under section
15 7(a) of the Small Business Act (15 U.S.C.
16 636(a)) to the maximum extent possible, sub-
17 ject to the availability of appropriations.

18 (C) APPLICATION OF FEE REDUCTIONS.—
19 If funds are made available to carry out this
20 paragraph, the Administrator shall reduce the
21 fees under subparagraph (A) for any loan guar-
22 antee or project subject to such subparagraph
23 for which the application is pending approval on
24 or after the date of enactment of this Act, until

the amount provided for such purpose is expended.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator for each of fiscal years 2009 and 2010—

(i) \$175,000,000 to carry out subparagraph (A)(i);

(ii) \$75,000,000 to carry out subparagraph (A)(ii).

(3) 504 LOAN FEE AND RATE REDUCTIONS.—

(A) FEE REDUCTIONS.—

(i) FEE REDUCTIONS.—To the extent the cost of such reduction in fees is offset by appropriations, for any loan guarantee or project for which an application is closed on or after the date of enactment of this Act—

(I) with respect to an institution described in subclause (I), (II), or (III) of section 502(3)(B)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(B)(i)), the Administrator shall, in lieu of the fees otherwise applicable under section

1 503(d)(2) of the Small Business In-
 2 vestment Act of 1958 (15 U.S.C.
 3 697(d)(2)), collect no fee;

4 (II) a development company
 5 shall, in lieu of the mandatory 0.625
 6 servicing fee under section
 7 120.971(a)(3) of title 13, Code of
 8 Federal Regulations, (relating to fees
 9 paid by borrowers), or any successor
 10 thereto, collect no fee; and

11 (III) the Administrator shall, in
 12 lieu of the fee otherwise applicable
 13 under section 503(d)(3) of the Small
 14 Business Investment Act (15 U.S.C.
 15 697(d)(3)), collect no fee.

16 (ii) REIMBURSEMENT FOR WAIVED
 17 FEES.—

18 (I) IN GENERAL.—To the extent
 19 the cost of such payments is offset by
 20 appropriations, the Administrator
 21 shall reimburse each development
 22 company that does not collect a serv-
 23 icing fee pursuant to clause (i)(II).

24 (II) AMOUNT.—The payment to
 25 a development company under sub-

1 clause (I) shall be in an amount equal
 2 to 0.5 percent of the outstanding
 3 principal balance of any guaranteed
 4 debenture for which the development
 5 company does not collect a servicing
 6 fee pursuant to clause (i)(II).

7 (iii) AUTHORIZATION OF APPROPRIA-
 8 TIONS.—There are authorized to be appro-
 9 priated to the Administrator for each of
 10 fiscal years 2009 and 2010—

11 (I) \$50,000,000 for the elimi-
 12 nation of fees under clause (i)(I);

13 (II) \$40,000,000 for payments
 14 under clause (ii) to offset the elimi-
 15 nation of fees under clause (i)(II);
 16 and

17 (III) \$10,000,000 for the elimi-
 18 nation of fees under clause (i)(III).

19 (B) RATE REDUCTION.—

20 (i) IN GENERAL.—To the extent that
 21 the cost of making an interest rate reduc-
 22 tion is offset by appropriations, the Admin-
 23 istrator shall pay, on behalf of a small
 24 business borrower, an amount equal to 100
 25 basis points of the interest rate required to

1 be paid by the borrower on the amount of
2 the guarantee provided under title V of the
3 Small Business Investment Act of 1958
4 (15 U.S.C. 695 et seq.), if the loan is
5 closed on or after the date of enactment of
6 this Act.

7 (ii) FREQUENCY OF PAYMENT.—The
8 Administrator shall make a payment under
9 clause (i) on a semiannual basis.

10 (iii) METHOD OF PAYMENT.—The Ad-
11 ministrator may use a central servicing
12 agent to make a payment under clause (i).

13 (iv) NOTICE TO DEVELOPMENT COM-
14 PANY.—The Administrator shall notify a
15 development company that receives a pay-
16 ment under clause (i) when funds are
17 made available for the rate reduction under
18 clause (i).

19 (v) IMPLEMENTATION.—A develop-
20 ment company that receives a payment
21 under clause (i) shall—

22 (I) use the payments solely for
23 the purpose provided; and

1 (II) adjust the amount of the
 2 monthly payment by the borrower ac-
 3 cordingly.

4 (vi) AUTHORIZATION OF APPROPRIA-
 5 TIONS.—There is authorized to be appro-
 6 priated to the Administrator for each of
 7 fiscal years 2009 and 2010, \$150,000,000
 8 for payments made under clause (i).

9 **SEC. 7. MICROLENDING.**

10 In addition to any amounts otherwise authorized to
 11 be appropriated for such purposes, there are authorized
 12 to be appropriated to the Administrator for each of fiscal
 13 years 2009 and 2010—

14 (1) \$5,000,000 for direct loans under section
 15 7(m) of the Small Business Act (15 U.S.C. 636(m));
 16 and

17 (2) \$20,000,000 for grants to intermediaries
 18 for marketing, management, and technical assistance
 19 under section 7(m)(4) of the Small Business Act (15
 20 U.S.C. 636(m)(4)).

21 **SEC. 8. SMALL BUSINESS INVESTMENT COMPANIES.**

22 Section 303(b) of the Small Business Investment Act
 23 of 1958 (15 U.S.C. 683(b)) is amended—

24 (1) by striking paragraph (2) and inserting the
 25 following:

1 “(2) MAXIMUM LEVERAGE.—

2 “(A) IN GENERAL.—The maximum
3 amount of outstanding leverage made available
4 to any 1 company licensed under section 301(c)
5 may not exceed the lesser of—

6 “(i) 300 percent of the private capital
7 of the company; or

8 “(ii) \$150,000,000.

9 “(B) MULTIPLE LICENSES UNDER COM-
10 MON CONTROL.—The maximum amount of out-
11 standing leverage made available to 2 or more
12 companies licensed under section 301(c) that
13 are commonly controlled (as determined by the
14 Administrator) and the private capital of which
15 the Administrator determines meets the re-
16 quirements of subsection (e) may not exceed
17 \$225,000,000.”; and

18 (2) by striking paragraph (4).

19 **SEC. 9. EMERGENCY SMALL BUSINESS LENDING ADVER-**
20 **TISING STRATEGY.**

21 Section 4 of the Small Business Act (15 U.S.C. 633)
22 is amended by adding at the end the following:

23 “(i) EMERGENCY SMALL BUSINESS LENDING AD-
24 VERTISING STRATEGY.—

1 “(1) PURPOSE.—The purpose of this subsection
2 is to ensure that the Administrator provides infor-
3 mation to the owners of small business concerns re-
4 garding lenders in their areas that participate in
5 programs of the Administration and that will allow
6 small business concerns to access business capital
7 during a liquidity and capital lending shortage.

8 “(2) LENDING ADVERTISING STRATEGY.—The
9 Administrator shall develop an emergency small
10 business lending advertising strategy to inform small
11 business concerns located throughout the United
12 States that loans under this Act are available
13 through lenders that participate in programs of the
14 Administration.

15 “(3) MEDIA.—The Administrator shall use
16 print, radio, television, and Internet advertisement,
17 where appropriate, to carry out this subsection.

18 “(4) EFFECTIVE DATE.—Not later than 30
19 days after the date of enactment of this Act, the Ad-
20 ministrator shall implement the emergency small
21 business lending advertising strategy.

22 “(5) AUTHORIZATION OF APPROPRIATIONS.—
23 There are authorized to be appropriated to carry out
24 this subsection—

1 “(A) \$5,000,000 for each of fiscal years
2 2009 and 2010; and

3 “(B) such sums as may be necessary for
4 each fiscal year thereafter.”.

5 **SEC. 10. TAX PROVISIONS.**

6 (a) EXTENSION OF TEMPORARY INCREASE IN LIMITATIONS ON EXPENSING OF CERTAIN DEPRECIABLE
7 BUSINESS ASSETS.—

9 (1) IN GENERAL.—Paragraph (7) of section
10 179(b) of the Internal Revenue Code of 1986 is
11 amended—

12 (A) by inserting “AND 2009” after “2008”
13 in the heading, and

14 (B) by inserting “or 2009” after “In the
15 case of any taxable year beginning in 2008”.

16 (2) EFFECTIVE DATE.—The amendments made
17 by this subsection shall apply to taxable years beginning after December 31, 2008.

19 (b) CARRYBACK OF CERTAIN NET OPERATING
20 LOSSES ALLOWED FOR 5 YEARS; TEMPORARY SUSPENSION OF 90 PERCENT AMT LIMIT.—

22 (1) IN GENERAL.—Subparagraph (H) of section
23 172(b)(1) of the Internal Revenue Code of 1986 is
24 amended to read as follows:

1 “(H) 5-YEAR CARRYBACK OF CERTAIN
2 LOSSES.—

3 “(i) TAXABLE YEARS ENDING DURING
4 2001 AND 2002.—In the case of a net oper-
5 ating loss for any taxable year ending dur-
6 ing 2001 or 2002, subparagraph (A)(i)
7 shall be applied by substituting ‘5’ for ‘2’
8 and subparagraph (F) shall not apply.

9 “(ii) TAXABLE YEARS ENDING DUR-
10 ING 2008 AND 2009.—In the case of a net
11 operating loss with respect to any eligible
12 taxpayer for any taxable year ending dur-
13 ing 2008 or 2009—

14 “(I) subparagraph (A)(i) shall be
15 applied by substituting ‘5’ for ‘2’,

16 “(II) subparagraph (E)(ii) shall
17 be applied by substituting ‘4’ for ‘2’,
18 and

19 “(III) subparagraph (F) shall not
20 apply.

21 “(iii) ELIGIBLE TAXPAYER.—For pur-
22 poses of clause (ii), the term ‘eligible tax-
23 payer’ means a corporation or partnership
24 which meets the gross receipts test of sec-
25 tion 448(c) (determined by substituting

1 ‘\$10,000,000’ for ‘\$5,000,000’ and ‘5-tax-
 2 able-year period’ for ‘3-taxable-year pe-
 3 riod’) for the taxable year in which the loss
 4 arose (or, in the case of a sole proprietor-
 5 ship, which would meet such test if such
 6 proprietorship were a corporation.”.

7 (2) TEMPORARY SUSPENSION OF 90 PERCENT
 8 LIMIT ON CERTAIN NOL CARRYBACKS AND
 9 CARRYOVERS.—

10 (A) IN GENERAL.—Section 56(d) of the of
 11 the Internal Revenue Code of 1986 is amended
 12 by adding at the end the following new para-
 13 graph:

14 “(3) ADDITIONAL ADJUSTMENTS.—For pur-
 15 poses of paragraph (1)(A), in the case of an eligible
 16 taxpayer (as defined in section 172(b)(1)(H)(iii)),
 17 the amount described in clause (I) of paragraph
 18 (1)(A)(ii) shall be increased by the amount of the
 19 net operating loss deduction allowable for the tax-
 20 able year under section 172 attributable to the sum
 21 of—

22 “(A) carrybacks of net operating losses
 23 from taxable years ending during 2008 and
 24 2009, and

1 “(B) carryovers of net operating losses to
2 taxable years ending during 2008 or 2009.”.

3 (B) CONFORMING AMENDMENT.—Sub-
4 clause (I) of section 56(d)(1)(A)(i) of such Code
5 is amended by inserting “amount of such” be-
6 fore “deduction described in clause (ii)(I)”.

7 (3) ANTI-ABUSE RULES.—The Secretary of
8 Treasury or the Secretary’s designee shall prescribe
9 such rules as are necessary to prevent the abuse of
10 the purposes of the amendments made by this sub-
11 section, including anti-stuffing rules, anti-churning
12 rules (including rules relating to sale-leasebacks),
13 and rules similar to the rules under section 1091 of
14 the Internal Revenue Code of 1986 relating to losses
15 from wash sales.

16 (4) EFFECTIVE DATES.—

17 (A) SUBSECTION (a).—The amendments
18 made by paragraph (1) shall apply to net oper-
19 ating losses arising in taxable years ending in
20 2008 or 2009.

21 (B) SUBSECTION (b).—The amendments
22 made by paragraph (2) shall apply to taxable
23 years ending after December 31, 2007.

1 **SEC. 11. TROUBLED ASSETS.**

2 Section 3(9) of the Emergency Economic Stabiliza-
3 tion Act of 2008 (division A of Public Law 110–343) is
4 amended—

5 (1) in subparagraph (A), by striking “and” at
6 the end;

7 (2) by redesignating subparagraph (B) as sub-
8 paragraph (C); and

9 (3) by inserting after subparagraph (A) the fol-
10 lowing:

11 “(B) a trust certificate issued by the Ad-
12 ministrator of the Small Business Administra-
13 tion under section 5(g) of the Small Business
14 Act (15 U.S.C. 634(g)), a loan guaranteed by
15 the Small Business Administration under sec-
16 tion 7(a) of the Small Business Act (15 U.S.C.
17 636(a)), and a trust certificate issued under
18 section 505 of the Small Business Investment
19 Act of 1958 (15 U.S.C. 697), including an un-
20 derlying debenture, the purchase of which the
21 Secretary determines promotes financial market
22 stability; and”.

○